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HUMAN RIGHTS COMMITTEE

Sixty-ninth session

SUMMARY RECORD OF THE 1846th MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 13 July 2000, at 3 p.m.

Chairperson: Ms. MEDINA QUIROGA

later: Mr. BHAGWATI

later: Ms. MEDINA QUIROGA

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GE.00-43219 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Second periodic report of Ireland (CCPR/C/IRL/98/2; CCPR/C/69/L/IRL)

1. At the invitation of the Chairperson, Mr. McDowell, Ms. Anderson, Mr. Barrett, Mr. Flahive, Mr. Ingoldsby, Mr. Rowan, Ms. McSweeney, Mr. Hanrahan and Mr. MacAodha (Ireland) took places at the Committee table.

2. The CHAIRPERSON invited the head of the delegation to address the Committee.

3. Mr. McDOWELL (Ireland) said that his country was an independent democratic republic with a Constitution which had been enacted directly by the people in 1937. At the heart of that Constitution was a system of fundamental rights which were guaranteed by Irish law. Every citizen was entitled to obtain vindication of those rights through access to the courts, and in addition there was a comprehensive system of judicial review which covered all public administrative acts and guaranteed redress to anyone who had suffered as a result of the improper use of administrative and legal powers. The role of the Irish High Court and Supreme Court in protecting, developing and extending civil and political rights and freedoms was central to Irish civil society. The courts had developed an elaborate constitutional jurisprudence in relation to all the rights conferred under the Constitution, and had thus created a culture of respect for and vindication of civil and political rights.

4. Ireland was one of the longest established constitutional democracies, and was unique among member States of the European Union in combining a number of notable features: a written Constitution amendable only by referendum, judicial review of legislation at the request of the citizen, judicial review of administrative and executive action, the right of citizens to challenge any breaches of their constitutional rights and to obtain damages, a freedom of information regime, availability of habeas corpus, guarantee of bail, and the right to jury trial.

5. However, Ireland was not complacent regarding its record in developing, protecting and vindicating civil and political rights and liberties. The reporting process under the Covenant had strengthened its commitment to carrying out a regular human rights audit, and the vigilance of the media and NGOs had helped to ensure that political debate was of a high quality and conducted openly and critically.

6. The Committee's reports were given wide circulation in Ireland, and the Government had taken a number of initiatives to strengthen civil and political rights, including the Human Rights Commission Act, the Equal Status Act, the Employment Equality Act and the National Disability Authority Act. It was also in the process of legislating on the rights of children, on the incorporation of the European Convention on Human Rights into Irish law, mental health, an independent prisons authority and reform of the law relating to defamation. Perhaps the most significant development since the presentation of the second periodic report had been the conclusion on 10 June 1998 of the Good Friday Agreement, under which the Government committed itself to take measures to strengthen the constitutional protection of human rights,

drawing upon the European Convention and on other related international legal instruments. Prominent among those measures was the establishment of the Human Rights Commission, which it was hoped would be a model for other countries and would lead rather than follow standards of best practice in that area.

7. The Government was also committed under the Good Friday Agreement to incorporating the European Convention on Human Rights into Irish law, which would help to ensure uniformity of human rights protection in both parts of Ireland and thus contribute to unity and reconciliation. A wide-ranging review of the Offences Against the State Acts was also being carried out by an independent review group, which had consulted the Council of Europe and United Nations bodies to ensure compliance with international human rights norms.

8. The Government was also doing its best to provide a legislative and administrative response to the comparatively recent challenge of asylum-seekers and economic migrants, a response which would comply with its obligations under international law and respect the rights of those seeking to enter the country. Because it had not shared the colonial experience of certain other European States, Ireland had not developed policies relating to immigration or integration of racial minorities, but it was currently developing a code which would meet the needs of modern society, accord with the Constitution and comply with the best standards of international practice.

9. A comprehensive legal infrastructure to combat discrimination on grounds of gender, marital status, family status, sexual orientation, religious belief or unbelief, age, disability, race or membership of the Traveller community was currently being put in place, and substantial resources had been allocated to ensuring its implementation. A national consultative committee on racism and interculturalism was developing an integrated approach to counter racism and to promote an inclusive, tolerant, intercultural society. Although the Covenant had not so far been incorporated into domestic law, Ireland took its obligations under it very seriously and viewed its provisions as standards which should govern legislative, executive and judicial actions.

10. The CHAIRPERSON invited the Irish delegation to reply to the list of issues (CCPR/C/69/L/IRL), which read:

> "Constitutional and legal framework within which the Covenant and the Optional Protocol are implemented (art. 2)
>
> 1. What has the Constitutional Review Group (paras. 13-15, 236-237) recommended specifically with regard to the full implementation of Covenant rights in Ireland, and what decisions have been adopted by the Irish Government in the light of the Review Group's findings (report, para. 16)? Has the All-Party Oireachtas Committee on the Constitution made recommendations with respect to the implementation of the Covenant (paras. 238-240)?
>
> 2. To what extent have the courts had regard to the Covenant and the Views of the Committee in deciding issues relating to Covenant rights? Please give examples of relevant case-law.

3. What process has been established to follow up on the Committee's concluding observations and Views under the Optional Protocol?

4. What consideration has been given to the withdrawal of Ireland's reservations to article 10, paragraph 2 (report, para. 154), article 14 (report, para. 203), article 19, paragraph 2 (report, para. 242), and article 20, paragraph 1?

Derogation in states of emergency (art. 4)

5. Bearing in mind that the state of emergency declared by the Oireachtas on 1 September 1976 was lifted on 7 and 16 February 1995 (report, para. 109), what measures have been taken to review actions under the Emergency Powers Act 1976 (paras. 11 and 19 of the concluding observations of 28 July 1993)?

The right to life, liberty and security of person, the treatment of detainees and the right to a fair trial (arts. 6, 7, 9, 10 and 14)

6. With regard to the instructions contained in the Garda Police Code of 1994 and 1996 (report, para. 113), please provide information concerning the Constitution and procedure of the Garda Complaints Board in investigating complaints of abuse (report, paras. 130-131). Please provide up-to-date statistics on the number of complaints and their follow-up, including an indication of criminal or disciplinary action taken against police officers alleged to be offenders and remedies provided to victims.

7. Is the establishment of a fully independent authority envisaged to investigate complaints against the police and to replace the official Garda Complaints Board?

8. Please provide information on the conditions of detention in Irish jails, including the segregation of remand prisoners from convicted persons. How is the overcrowding in prisons being alleviated?

9. What progress has been made by the Committee established to review the Offences Against the State Act 1939-98? What are the maximum periods of police detention established by the Act? How many persons have been convicted of offences created by the Act in the reporting period? Please provide detailed information on the application of the rule that the accused's silence on questions regarding his whereabouts, associations or actions may be used as relevant material tending to indicate guilt.

10. Has further consideration been given to the need for the Special Criminal Court (para. 19 of the Committee's concluding observations; report, para. 205)?

11. Is abortion prohibited and are there any exceptions?

Gender equality and protection from domestic violence (arts. 3, 7 and 26)

12. What have been the effects of equality legislation and other measures in achieving greater participation of women in political life, in public institutions, in the professions and in employment (report, para. 88)?

13. Please provide information about progress in implementing the Equal Status Bill.

14. What progress has been made in implementing the recommendations of the Task Force on Violence Against Women (paras. 303-316)? What measures have been adopted to combat the increase in rapes?

Protection of children (arts. 23 and 24)

15. What is the current status of the Children Bill discussed in paragraphs 319-320 of the report? Please provide statistics on child abuse and examples of the application of the Child Trafficking Act 1998 and the Sexual Offences (Jurisdiction) Act 1996 (paras. 326-327).

Protection of privacy (art. 17)

16. Please provide information on Irish law and practice with respect to sexual relations between consenting adults of the same sex and indicate whether there is any legislation concerning discrimination on the ground of sexual orientation.

Freedom of expression, thought, conscience and religion (arts. 18 and 19)

17. What is the outcome of the proposals of the Constitution Review Group to delete that part of article 40.6.1.i of the Constitution which requires the creation of the offence of publishing indecent matter (para. 21 of the Committee's concluding observations; report, paras. 248-253)?

18. What is the outcome of the proposals of the Constitution Review Group to amend the constitutional oath requirement for judges (para. 15 of the Committee's concluding observations; report, paras. 236-237)?

The rights of persons belonging to minorities (arts. 18, 25, 26 and 27)

19. Please provide information on religious minorities and on new religious movements in Ireland. What is the current law and practice in this regard?

20. To what extent has the implementation of the recommendations of the Task Force on the Travelling Community (paras. 369-373) improved their de facto situation? Do Travellers have effective protection from discrimination in the private sector in light of the Employment Equality Act of 1998, which outlaws discrimination against the Travellers? To what extent do they participate in the electoral process and exercise their political rights (paras. 356-359; concluding observations, para. 23)?

Dissemination of information about the Covenant (art. 2)

21. Please indicate the steps taken to disseminate information on the submission of the report and its consideration by the Committee and, in particular, on the Committee's concluding observations in respect of the State party's initial report. Furthermore, please provide information on education and training on the Covenant and its Optional Protocol provided to public officials."

11. Mr. McDOWELL (Ireland), in reply to question 1, said that the Constitutional Review Group had recommended in 1996 that the Constitution should be amended by expanding the list of fundamental rights to include personal rights identified by the Irish courts, as well as rights guaranteed under the European Convention on Human Rights and under the Covenant. However, the Group's recommendations would not take effect automatically, since the Irish Constitution could only be amended by referendum. The Group's report was still being considered by an all-party committee of Parliament, which had not yet addressed the question of implementing Covenant rights as distinct from rights guaranteed under the European Convention.

12. Replying to question 2, he said that in recent years there had been increasing reference to the Covenant, as well as to other human rights instruments, in cases brought before the Irish courts. The Covenant was used by advocates as an aid to interpretation of common-law principles and of rights guaranteed under the 1937 Constitution. In a number of high-profile cases involving the right to silence and protection against self-incrimination, reference had been made to article 14, paragraph 3 (g), of the Covenant. The Supreme Court accepted citation of the Covenant as basic source material for its adjudication on matters concerning fundamental human rights. In a 1995 case involving the right to life, extensive reference had been made to article 6 of the Covenant.

13. Turning to question 3, he said that considerable progress had been made in following up the Committee's concluding observations and Views. Many of the recommendations had been taken into account in the legislative programmes of successive Governments, and wide-ranging measures had been put in place providing a high level of protection for citizens and non-citizens alike. In addition, the Department of Foreign Affairs had established a human rights unit, whose task was to coordinate with other government departments responsible for domestic implementation of international human rights standards, and notably to assist in the drafting of legislation and the consideration of proposals for legal reform. In 1997, a Standing Inter-Departmental Committee on Human Rights had been set up to review on a regular basis the recommendations of treaty bodies such as the Committee, and to speed up legislation for the ratification of international instruments. The Inter-Departmental Committee was currently engaged in the administrative procedures necessary for the ratification of the Convention on the Elimination of All Forms of Discrimination against Women and of the Convention against Torture. It was hoped that Ireland would formally ratify the latter before the end of the year. The National Human Rights Commission which was soon to be set up would play an important role in developing human rights law in Ireland.

14. The Committee had expressed concern as to whether the Emergency Powers Act 1976 was still in force. He emphasized that that Act had remained in effect for only one year and had

then been allowed to lapse: with the ending of the state of emergency in Ireland under the Good Friday Agreement, there was now no possibility of reviving it. In addition, a review of the Special Criminal Court was now being carried out by an independent committee, established by the Government, under the chairmanship of a former judge of the Supreme Court. Its report was expected in a few months' time.

15. Following the Committee's recommendation that there should be greater adherence to human rights guidelines by police officers and law enforcement agencies, substantive reforms had been introduced in the police training system. In the past, the eight-week induction course which had been given was quasi-military in its approach. Today, recruits followed a two-year course which involved academic study as well as practical experience, and instruction in human rights formed a significant part of the syllabus.

16. Administration of the censorship law in Ireland had likewise been radically transformed, and was now in effect only applied to material containing hard pornography. In addition, the Government had embarked on a wholesale review of the law and hoped to bring proposals before Parliament in the near future. Published material regarding which complaints had been submitted could be banned by the Censorship Appeals Board, but the courts had power to reverse the Board's decisions.

17. Replying to question 4, he said that in relation to Ireland's reservations to article 10, paragraph 2, the Government had recently established a remand centre near Dublin which had 400 places in a separate facility for male prisoners. The first prisoners had been admitted in November 1999 and so far 250 had been received. There were still a small number of remand prisoners in other institutions, but when the centre was fully operational there would be more than adequate space to keep remand prisoners separate from convicted prisoners.

18. In September 1999 a Children Bill had been introduced, proposing a radically different system of juvenile justice. No child could incur criminal responsibility below the age of 12. All persons between 12 and 18 would be categorized as children, but those between 12 and 15 would be held in institutions run by the Department of Education, and those between 16 and 18 in centres run by the Department of Justice. There had been some adverse publicity in Ireland over the failure of the State to provide separate accommodation for children who were mentally or emotionally disturbed and who were unable to live at home; the Department of Education was now in the process of setting up dedicated facilities for such children. He was glad to say that Ireland should soon be in a position to withdraw its reservation to article 10.

19. Concerning Ireland's reservation to article 14, paragraph 6, he said that a system had now been established to provide compensation for persons who had suffered a confirmed miscarriage of justice involving fines or imprisonment. Ireland's reservation in respect of such compensation had been withdrawn on 24 August 1998. As to the reservation concerning article 19, paragraph 2, he said that in practice the law in Ireland had allowed for independent broadcasting since 1988. There were over 20 independent local radio stations, one independent national radio station, and one independent national TV station, and there were plans greatly to extend the number of licences. State monopoly broadcasting would not now be constitutionally possible in

Ireland. Licensing was regulated by an independent commission, and efforts were being made to make it more liberal in scope: for instance, the ban on religious broadcasting was currently being reviewed.

20. The reservation to article 20, paragraph 1, which was admittedly hard to defend, had been entered because Ireland had experienced difficulty in formulating a specific offence capable of adjudication at the national level in such a form as to reflect general principles of law recognized by the community of nations as well as the right of freedom of expression. It had reserved the right simply to postpone the introduction of legislation on that subject. That position had been motivated by a concern that approval of an insurrectionary war against apartheid, support of Islamic jihad or the endorsement of a peace-enforcement initiative like that mounted in Kosovo or Bosnia should not be criminalized or come within the definition of propaganda for war. He was sure that capable draftsmen would produce a satisfactory solution.

21. In response to question 6, he announced that the purpose of the Garda Siochána (Complaints) Act of 1986 had been to introduce an independent system of investigation and adjudication of complaints made by the public about the conduct of members of the Irish police. The complex provisions of the Act had paved the way for the establishment of a Complaints Board and a Complaints Appeal Board and for the appointment of disciplinary tribunals. The Act had entered into force in 1987. The independent complaints mechanism existed alongside an internal complaints system. Members of the public could avail themselves of either or both systems.

22. The complexity of the Act derived largely from an attempt to resolve an awkward question. According to the Constitution, the administration of justice was incumbent solely on the courts in the exercise of their criminal jurisdiction, which meant that judges were the only people who could determine whether a criminal offence had been committed. Yet, if a formalized system of tribunals were to exist to hear complaints of criminal behaviour against a police officer, that would signify that the courts were excluded from a non-court process in respect of the same territory and a binding finding of guilt.

23. The Complaints Board was obliged to report every three years on the manner in which it was discharging its duties and the obstacles it was encountering, and to submit proposals for measures to heighten its effectiveness. In 1998, the Board had submitted a report suggesting substantial changes, which the Minister for Justice was considering in conjunction with his review of the 1986 Act.

24. One very unsatisfactory aspect of the operation of the Act was that its procedures and mechanisms were not capable of handling the volume of complaints addressed to the Board, with the result that delays had meant that in some cases criminal proceedings had not been instituted against members of the police because they had been time-barred. Nonetheless, the Minister was determined to ensure that there was an adequate system whereby members of the public could lodge a complaint and have it adjudicated. Once the review was complete, he would submit detailed proposals to the Government on legislative reforms and procedural changes to the Complaints Board System. An internal policy decision was due by the summer or autumn of that year and the drafting of legislation would commence immediately thereafter. In view of the

constitutional complexity of the process it was, however, unlikely that that legislation would be in place before 2002. One of the Minister's policy proposals might be the appointment of a police ombudsman.

25. A further issue was whether a body should be set up to deal with suspicions of malpractice by the police. The current system was predicated on the lodging of a complaint by someone with locus standi. Consideration was also being given to widening the investigative process to include more systematic problems, rather than focusing on individual behaviour. One cause for concern was the large and increasing backlog of unresolved complaints. The number of members of the police subject to disciplinary sanctions was small and varied from year to year, but many more had been disciplined by internal processes and dismissed from the force.

26. Turning to question 8, he acknowledged the existence of a serious underlying problem, but substantial steps were being taken to overcome it, because the Irish Government was strongly committed to the principle that all persons deprived of their liberty should be treated with humanity and dignity. The daily average number of prisoners in custody in 1999 had been 2,763, of whom 2.7 per cent were female. The total number of prison staff was 3,099. Security was provided by unarmed prison staff except in Portlaoise prison, where there were paramilitary inmates.

27. He conceded that overcrowding and poor sanitation existed in some Irish prisons owing to the fact that over the years local prisons had been closed and only central prisons had remained. In the 1960s, most Irish prisons had still dated from the nineteenth century and been in a bad state of repair. In the 1970s some new prisons had been built and some former military prisons had been turned over to civilian use. Nevertheless, the rising crime rate had led to overcrowding and nineteenth-century ideas of sanitation were still to be found in the older prisons. The current government programme aimed to increase prison accommodation by 2,000 places and to provide in-cell sanitation for all prisoners. Since 1997, 1,277 new places had been created and facilities had been upgraded at Mountjoy women's prison. Ireland operated a combined system of semi-open and closed prisons. Overcrowding was worse in the latter. New prison rules had been proposed and an independent prison authority had already been set up in anticipation of its being put on a statutory basis.

28. As at 4 July, remand prisoners (who were segregated from convicted prisoners) numbered 373, 71 per cent of whom were being held in the new purpose-built prison at Cloverhill, which could accommodate 400. It was therefore likely that Cloverhill would be large enough to house the entire remand population. In an effort to alleviate overcrowding, in addition to the building of new prisons, the method of temporary release had been employed, but the larger number of places available in prisons was making release on parole less necessary.

29. Going back to question 5, he explained that the Emergency Powers Act of 1976 had provided that, unless it was extended by decision of the Irish Parliament, it would lapse after one year, but Parliament could revive it at any time if the Government issued an order to that effect. The operation of the entire Act had been contingent on the continuation of the state of emergency declared in 1996. The Act had likewise stipulated that if that state of emergency ended, the Act would cease to apply. After the Good Friday Agreement, the Irish Government

had decided to revoke the state of emergency. The 1976 Act was therefore dead and could not be revived. Only about 30 people had been dealt with under that Act in the first six months of its enforcement.

30. Outlining the background to the introduction of the Offences Against the State Act of 1939 referred to in question 9, he said that it had come into existence just before the Second World War and at the start of an IRA campaign. Various parts of that Act were dormant. They included the sections on administrative detention or internment and on certain criminal offences aimed at subverting the authority of the State. A third portion of that Act dealt with the establishment of a Special Criminal Court (question 10), for which provision had been made under article 38 of the Constitution, which further stated that persons charged with criminal offences, save those of a serious nature or coming under military law, must be tried by jury. Those courts had operated from time to time to deal with cases in respect of which it had been established in accordance with the law that the ordinary courts would not be adequate to secure the administration of justice.

31. The 1939 Act had made it possible to put army officers or practising lawyers, rather than judges, on the bench of the Special Criminal Court. During the periods 1939-1945 and 1960-1962, when subversive insurgencies had taken place, army officers had been members of the Court. In 1986, the Government had decided, on legal advice, that the participation of army officers and practising lawyers was unconstitutional. It was accepted conventional, constitutional wisdom in Ireland that impartial independent judges were essential for the administration of criminal justice and therefore, since the 1980s, special criminal courts had been constituted only with full-time, independent judges appointed to other courts. Prior to that, some retired judges had been allowed to take part in its activities.

32. The Special Criminal Court followed the same legal and procedural rules as the ordinary courts, with two exceptions. It issued a written, reasoned judgement and in every case applied the same standard of criminal proof, i.e. proof beyond reasonable doubt, as that required in jury trials. The only essential difference between a Special Criminal Court and a jury court was usually that three judges were present in the former. The Special Criminal Court was very similar in its composition and procedure to the criminal courts of the great majority of countries which did not have trial by jury. It was a formal court, not a court martial.

33. As the law stood, if the Director of Public Prosecutions (who was completely independent of the Government and could be removed from office only for misbehaviour or incapacity) certified that the ordinary courts were inadequate to deal with the offence with which a person had been charged, the court of first instance responsible for preliminary investigations and charging was required to send the accused to a Special Criminal Court. In addition, a person who had committed a scheduled offence under the 1939 Act was automatically sent for trial before the Special Criminal Court, unless the Director of Public Prosecutions intervened and stated that the ordinary courts were adequate to deal with the offence.

34. As part of the Good Friday Agreement, the Government had appointed a committee, chaired by Judge Hederman and comprising jurists and barristers to draft a report on the Offences Against the State Act and the Special Criminal Court. Under its terms of reference, the committee had been requested to examine (a) all aspects of the Act, taking into account the view

of the participants in the negotiations leading to the Belfast Agreement that there should be a normalization of security arrangements and practices, (b) the threat posed by international terrorism and organized crime, and (c) Ireland's obligations under international law. It had been instructed to report to the Minister for Justice, Equality and Law Reform and to recommend reforms. The Committee's proposals were sure to be thoroughgoing and mindful of the human rights implications of its review.

35. He explained that in Ireland jurors were not sequestered and so in cases involving very serious criminal offences, organized crime or paramilitary activities, they could be threatened and it was therefore easy to pervert the course of justice. Witness protection programmes were difficult to organize, since it was unreasonable to expect a jury member to leave the country in order to avoid intimidation. That a was further reason why special criminal courts had been set up. The Government was, however, eagerly looking forward to the report because it intended to normalize the administration of criminal justice as far as possible and sought at all stages to vindicate the value of jury trial. He stressed that the Director of Public Prosecutions was most discerning when it came to sending a person for trial before a special criminal court, as had been demonstrated by a case where 11 people had been charged with the offence of kicking an HIV-infected drug addict to death in Dublin. Nine of the accused had been sent for trial by ordinary courts, but two had been brought before the Special Criminal Court.

36. The maximum length of detention in police custody without charge had been increased under the Offences Against the State (Amendment) Act of 1998 from 48 hours to 72 hours, although detention must be authorized by a judge. The 1998 Act was the Irish State's response to large-scale, organized attacks on civilian targets by dissident groups from both sides which wished to subvert the peace process. Ireland considered that it had a moral obligation to defend the human rights of innocent civilians who were threatened by organized terrorism. Although the Government was reluctant to depart from a relaxed and open legal system in which jury trials were the norm, special measures were unavoidable in the current situation. The 1998 Act came up for review before Parliament every year, and would now remain in force until June 2001.

37. The Committee had commented on the provision of Irish law which stated that the opinion of a chief superintendent of police, expressed before the Special Criminal Court, that an individual was a member of an illegal organization would be admissible as evidence of such membership. The provision was certainly an unusual one, without precedent in the Irish or other common-law systems. However, the Court would accept that evidence only in certain circumstances. If the defendant testified in court that he was not a member of an illegal organization, that testimony would take precedence over the police officer's, and the defendant could not be subjected in the witness-box to surprise questions which he had had no chance to discuss with a lawyer. During questioning by the police, if a detainee was asked whether he was a member of an illegal organization and chose not to reply, that fact might be quoted in support of the police officer's opinion, but it did not, in itself, constitute proof of membership. Some 30 people had been detained and questioned under the 1998 Act, but none had been prosecuted so far.

38. Abortion had always been illegal in Ireland. In the 1980s, there had been concerns that the State might introduce a constitutional right to abortion, as had happened in the United States of America, and the resulting debate had led to an amendment of the Constitution, adopted

in 1983, which read: "The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect and, as far as practicable, by its laws to defend and vindicate that right."

39 A test case had arisen in 1992, when a 14-year-old girl (referred to only as "X" to protect her anonymity) had sought to travel abroad to procure an abortion. She had been forbidden to do so by a court judgement, but the Supreme Court had decided, on appeal, that she should be allowed to travel abroad for the abortion because of the very real risk that she would otherwise commit suicide.

40 The "X" case had proved so controversial that it had led to two further amendments to the Constitution, following a referendum. The amendments stated that a woman's right to travel could not be restricted in order to prevent her seeking an abortion abroad, and that people in Ireland were free to receive information about services, including abortion, available in places outside Irish jurisdiction. In a subsequent case, known as the "C" case, a girl had likewise been allowed to travel abroad for an abortion because of the risk that she would otherwise commit suicide.

41 In September 1999, the Government had issued a discussion paper, detailing proposals for a possible change in the law, which described the social and medical implications of the various options compared with the status quo. The paper had been submitted to a parliamentary committee on constitutional change, which was consulting the various interest groups concerned. The issue was not seen purely in religious terms: it was much more a question of achieving a balance between the human rights of the mother and those of the unborn child. Abortion was allowed if it was medically necessary to save the mother's life, but it was not allowed as a means of contraception.

42 Ms. EVATT thanked the Irish delegation for its oral presentation. There had been a number of encouraging developments in Ireland since the presentation of the last report, including the withdrawal of one of Ireland's reservations to the Covenant, the expiry of the Emergency Powers Act of 1976 and the legalization of divorce. She welcomed the evidence of consultation with NGOs in the preparation of the report.

43 The new Human Rights Commission was a valuable development. She asked what role the Commission would play in the enforcement of the rights enshrined in the Covenant. Would it be able to initiate legislation or otherwise intervene to uphold those rights? Would it have the right to receive individual complaints, and the resources to deal with them? How would its independence be guaranteed? How would its members be appointed? And who would control its budget?

44 She was pleased to note that Ireland was to incorporate the European Convention on Human Rights into its legislation. However, that instrument did not cover all the rights enshrined in the Covenant, for instance in article 26 (equality before the law) and article 27 (rights of minorities). What remedies existed to combat infringements of those rights in cases not already covered by existing legislation? What action would Ireland take to respond to the Committee's findings following its consideration of the report? How would the Government ensure that all new legislation complied with Ireland's obligations under the Covenant?

45. Turning to the question of treatment of persons in Garda custody (paras. 132-137 of the report), she asked how the rules governing the treatment of persons in custody were enforced. From the information before the Committee, it appeared that breaches of the rules might lead to disciplinary procedures, but would not, in themselves, affect the lawfulness of custody or the admissibility of evidence.

46. She welcomed the information provided by the delegation about the number of complaints to the Garda Complaints Board, but noted that very few complaints had been referred to the tribunal which ruled on breaches of discipline. The Committee had received information from NGOs and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment which indicated that the Complaints Board lacked independent powers of investigation. Indeed, the Complaints Board itself had stated that it had no say in the appointment of police officers to internal investigations. She would welcome more information on that point.

47. The delegation had reported that a new women's prison had been opened. Had the old women's prison in Limerick, which had been criticized by the European Committee for the Prevention of Torture, now been closed? Punishments, including loss of remission, could be imposed on prisoners. What legal safeguards existed to ensure the due process of law in such cases? What alternative forms of punishment, other than a prison sentence, were being developed in Ireland? Was there an open prison for women? Would the new independent prison authority have a system for the independent consideration of complaints?

48. Although the expiry of the Emergency Powers Act was a welcome development, there were still concerns about the operation of the Offences Against the State Act and, in particular, the Offences Against the State (Amendment) Act of 1998. She was concerned about the extension of detention without charge to up to 72 hours, and about the grounds for arrest under the Act, which apparently included the suspicion that an individual was about to commit an offence. It appeared that relatively few of the people arrested were subsequently charged, which suggested the possibility of arbitrary arrest or detention, prohibited by article 9, paragraph 1, of the Covenant. She would welcome more information on that point.

49. Mr. KRETZMER asked about the law and policy prevailing in Ireland in the case of deaths at the hand of the authorities. Was there a public and transparent inquiry into such deaths? And were the families of the deceased represented and allowed to see all the evidence?

50. He asked for more information about the Garda Complaints Board. Was the Board completely independent, and how was its independence guaranteed? Who were its members and how were they appointed? How transparent and credible were its investigations? If the Board found that no breach of law or discipline had taken place in a particular case, was there any possibility of an appeal against that decision? Could the Board order a criminal prosecution, or was there any other mechanism for the prosecution of police officers for criminal offences? From the information before the Committee, it did not appear that any police officer had ever been prosecuted following an investigation by the Board.

51. Turning to the Special Criminal Court, he noted that cases came before that Court either automatically, owing to the nature of the alleged offence, or by a decision of the independent

Director of Public Prosecutions (DPP). Could there be any appeal against a decision of the DPP? The Irish representative had referred to one case in which two defendants had been tried by the Special Criminal Court and the remaining nine by an ordinary court, which, on the face of it, appeared discriminatory. What safeguards existed to ensure equality before the law in such circumstances?

52. He would like more information about detention of asylum-seekers. In what circumstances could asylum-seekers be detained, and for how long? What guarantees were there that a person would not be deported to a country where he might be killed or tortured? If a person was denied asylum, but could not be deported for some reason, could he be detained indefinitely?

53. The delegation had reported about a new Mental Health Bill. However, from the information before the Committee, it appeared that there could be no appeal against the decision of a doctor to commit a person to a mental institution for 28 days. That appeared to be inconsistent with article 9 of the Covenant, and he would welcome more information on that point. Finally, he asked whether legal aid was available to people who had been arrested but not yet charged.

54. Mr. HENKIN asked about Ireland's derogations from various articles of the Covenant. What articles were involved, and why were the derogations necessary? The Irish representative had described his country's commitment to the system of trial by jury. How did the Government justify the use of the Special Criminal Court in the case of some citizens, if the jury system was deemed to be the best for most of the population? What alternatives to prison were available for the punishment of offenders? Had Ireland considered privatization of the prison system as a possible way of improving prison conditions?

55. He asked in what circumstances asylum-seekers might be placed in detention. What legal advice was available to them? Was there any discrimination among asylum-seekers? In other words, was asylum granted preferentially to certain types of people from certain parts of the world? How did Ireland guarantee asylum-seekers' rights under article 26 of the Covenant (equality before the law)?

56. Mr. Bhagwati (Vice-Chairperson) took the Chair.

57. Mr. KLEIN commended the delegation on its comprehensive and sophisticated answers to the Committee's written questions, and on a highly informative report. He agreed with the Irish representative that the Covenant presented a challenge of standards to Ireland's domestic law. Since the Covenant had not been integrated into domestic law, he was concerned whether in certain areas the necessary adjustments had been made in order to meet those standards. Firstly, although article 40 of the Irish Constitution appeared to assure the rights of Irish citizens in connection with the Covenant, no indication had been given whether similar provision had been made for non-citizens. Likewise, it was not clear to him how the provisions of articles 28 and 40 of the Constitution dealing with emergency situations afforded all the protection in that area required by the Covenant. It was difficult to see how the rights of the Covenant could be assured if constitutional protection was withdrawn through application of those articles.

58. With regard to the Garda Complaints Board, about which other members had already spoken, he wished to emphasize that the Board's failure to appoint investigating officers was a matter of great concern to the Committee.

59. As to overcrowding in prisons, he welcomed the delegation's acknowledgement that deficiencies existed and the information that efforts were being made to deal with them. However, as in the case of other countries, the Committee could not accept the delegation's explanation that financial constraints were the main reason for the failure to resolve the situation.

60. His next question concerned the military courts referred to in article 38 of the Constitution. Did they enjoy the same standards of judicial administration, independence and impartiality as the Special Criminal Courts? And did their jurisdiction extend to civilians?

61. Finally, he would like more information about the entitlements of asylum-seekers and refugees in important areas such as medical provision and education. Furthermore, what was the exact nature of the "reasonable opportunity" of appeal afforded to persons who had been served with a deportation order?

62. Mr. SCHEININ also welcomed the report, and said he particularly appreciated the fact that section III had been written in consultation with the NGO sector. Ireland had clearly seized the opportunity to conduct a thorough stocktaking of its human rights situation, which in turn had been conducive to fruitful dialogue with the Committee. The delegation's oral answers also provided an excellent basis for the Committee's conclusions and recommendations.

63. His first concern related to the new Human Rights Commission. Although judges' increasing willingness to receive arguments based on the Covenant was welcome, the Commission's capacity to litigate was based only on human rights treaties ratified by Ireland and integrated into domestic law. That applied to the European Convention on Human Rights but not to the Covenant, and he was concerned that courts might adopt the habit of referring only to the European Convention at the expense of other instruments such as the Covenant. As long as the Commission lacked the power to apply the Covenant in its litigation functions, that risk would increase. He wondered whether the Irish authorities had given consideration to the experience of Norway, which, unlike the other Scandinavian countries, had decided after long debate to incorporate into its domestic legislation not only the European Convention but also the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

64. Turning to the issue of non-discrimination in the provision of legal protection, he would like to know Ireland's position regarding the exceptional provision in the draft European Union Charter on Fundamental Rights which stated that discrimination on grounds of nationality was prohibited only in relation to citizens of other EU countries. That was a clear violation of article 26 of the Covenant.

65. With regard to measures taken in time of public emergency, he asked whether Ireland planned to bring article 28 of the Constitution into conformity with article 4 of the Covenant. The reference in the former to emergencies "affecting the vital interests of State" clearly represented a lower threshold than the reference in article 4 to emergencies "which threaten the

life of the nation". Moreover, the Constitution did not distinguish between different fundamental rights, thus allowing derogation from all the rights protected under the Constitution. By contrast, article 4 of the Covenant clearly referred to categories of non-derogable rights. He would like to know if the State party was taking steps to ensure that all measures taken in future in a time of public emergency would fully meet the requirements of article 4 of the Covenant.

66. Lastly, while he welcomed the important developments with regard to abortion, it appeared that neither asylum-seekers nor under-age girls in the care of the authorities enjoyed the right to travel for an abortion, even if they were entitled to one on the grounds that the life of the mother was at risk. He wondered whether that did not constitute discrimination.

67. Ms. Medina Quiroga (Chairperson) resumed the Chair.

68. Mr. YALDEN said he too had been impressed by the extensive contribution of NGOs, and particularly the "shadow report". His questions concerned the implementation and monitoring of the extensive human rights legislation already introduced or about to be introduced, with particular regard to the activities of the Human Rights Commission. Were the Commission's decisions enforceable? And would it be independent, and seen to be independent, given its relationship with the Department of Justice? He had similar concerns about the Employment Equality Authority, which the Government proposed to set up under the Employment Authority Bill, particularly regarding its capacity to deal effectively and independently with discrimination wherever it occurred. Likewise, he would like to know more about the monitoring and supervision of services to be provided under the Equal Status Act. He also wondered whether disabled persons denied access to services by public authorities were entitled to compensation. Finally, he concurred with his colleagues in recommending that the Garda Complaints Board should be replaced by a stronger and more independent body.

69. Mr. SOLARI YRIGOYEN said he was very satisfied with the Irish Government's efforts to take account of the Committee's comments on Ireland's initial report. He also welcomed the fact that Ireland had lifted some of its reservations to the Covenant, and would like information on the decisions pending in respect of the remaining reservations. He especially welcomed Ireland's adoption of the Explosives (Landmines) Order of 1996, which provided for the complete eradication of anti-personnel mines from Irish territory.

70. Turning to the question of possible conflict between the Covenant and domestic law, he regretted that the Covenant, having been ratified in 1989, had still not been incorporated into domestic law, whereas the European Convention had. The Covenant should be at the top of the pyramid of human rights legislation, but little progress had been made towards its explicit recognition. He would like to know Ireland's intentions in that regard.

71. With regard to non-nationals, he would like to know what measures were being taken to change the discriminatory provisions which, as the report acknowledged, still existed in Irish law. In particular, why were foreign women married to Irish men under no obligation to register as foreigners, whereas foreign men married to Irish women were?

72. As to the "reasonable opportunity" for appeal against a deportation order, to which other members of the Committee had referred, he would like to know what administrative or legal recourse was available to an individual in that situation, and to whom the appeal should be addressed.

73. He wondered what person or persons guaranteed the independence of the Garda Complaints Board, and whether a complainant had the option of direct legal recourse allowing him to avoid the Board.

74. Since, in its concluding observations on Ireland's initial report, the Committee had adopted a stand against the Special Courts set up under the 1939 Offences Against the State Act, he would like to know whether measures were being taken to abolish them.

75. The report stated that Ireland had withdrawn one of the two reservations it had made to article 14 of the Covenant at the time of ratification. According to the remaining reservation to article 14, Ireland "reserves the right to have minor offences against military law dealt with summarily in accordance with current procedures, which may not, in all respects, conform to the requirements of article 14". He asked the delegation to provide examples of cases in which that reservation had been invoked.

76. Likewise, he would like more information concerning the Irish Government's intention to take steps to withdraw its reservation to article 14, paragraph 6, of the Covenant, whereby compensation for a miscarriage of justice could be effected by administrative means rather than by law. What stage had those measures reached?

77. The report did not indicate whether military service was compulsory in Ireland. If so, he would like to know whether conscientious objection was possible on grounds of freedom of conscience, and what length of civic service then became applicable.

78. Finally, in view of the fact that, according to the report, a person could still be committed to prison for failure to comply with a court order to make payments in discharge of a debt, he wished to know whether the authorities were taking steps to change the relevant legislation, which contravened article 11 of the Covenant.

79. Ms. CHANET, recalling Mr. Klein's comments, said serious problems were likely to occur if Ireland incorporated the European Convention on Human Rights into its domestic law without incorporating the Covenant. For example, it would not be possible to invoke the Covenant directly in cases concerning the right to silence or the rights guaranteed in article 25 of the Covenant, for which the European Convention made no specific provision. In such cases, Ireland would face serious problems involving compliance with article 2 of the Covenant.

80. Her second point concerned the provision of medical care for persons in police custody. Although the relevant legal provisions conformed with articles 7 and 9 of the Covenant, she would like to know what measures were being taken to ensure provision of both pre- and post-custody medical examinations, which provided an effective guarantee against maltreatment.

81. She shared the concerns expressed about detention imposed under the Offences Against the State Act, particularly in view of the differing interpretations of arbitrary arrest or detention found in article 9 of the Covenant and article 5 of the European Convention. Likewise, the seven-day period of pre-trial detention permitted by the Act constituted a contravention of article 9 of the Covenant.

82. She was particularly concerned at the continuing existence of the Special Criminal Court. The delegation had been at pains to explain that its only exceptional feature was the absence of a jury. The political aspects of that situation, including the link with the Good Friday Peace Agreement, were not the Committee's concern. Equally, the problem of allowing a derogation from the Constitution in respect of jury provision did not directly concern the Covenant. However, problems involving the Covenant occurred when the law did not specifically define the circumstances under which cases could be referred to such courts. In that regard, the delegation had stated that the Director of Public Prosecutions was responsible for determining what cases must be judged by the Special Courts. She would like more details about the criteria involved in such decisions. Also, although no judgements had yet been given in such cases, she would like to know more about the types of crime and other circumstances involved in the proceedings which had been conducted to date.

83. She was particularly concerned that the conditions of the Special Courts contravened article 14 of the Covenant, in that the rules of evidence in force contravened the right not to testify against oneself, and that the presumption of guilt related crucially to the testimony of a chief superintendent of police. In that sense, the conditions in Special Courts contravened the provision in article 14 relating to equal conditions for witnesses appearing for and against the defendant.

84. In conclusion, she would like to know the grounds for the Supreme Court's decision challenging the 1999 Immigration Act, and what measures the Government was taking in response to that decision.

The meeting rose at 6 p.m.